

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FREE SPEECH COALITION, INC., et al.)	Civil Action No. 2:09-4607
)	
Plaintiffs,)	JUDGE MICHAEL M. BAYLSON
)	
-vs-)	
)	
THE HONORABLE ERIC H. HOLDER, JR., Attorney General,)	
)	PLAINTIFFS' RESPONSE TO DEFENDANT'S BILL OF COSTS
Defendant.)	
)	
)	
)	

On September 27, 2013, Defendant filed a Bill of Costs in this action. (Doc. No. 235).

Plaintiffs object to a number of the items included in the Bill of Costs submitted by Defendants. Determination of Defendant's entitlement to costs, however, is premature. Both Plaintiffs and Defendant have filed appeals from the final judgment in this action, which are currently pending before the Court of Appeals for the Third Circuit. (Doc. Nos. 231, 233).

The Clerk's Office Procedural Handbook for the United States District Court for the Eastern District of Pennsylvania, prepared as a supplement to the Local Rules of the United States District Court for the Eastern District of Pennsylvania, sets forth the procedure for evaluating and processing bills of costs:

It is generally advisable *for the prevailing party to not file a bill of costs until after any appeals are decided*, or until after any period for filing appeals, or for filing post trial motions, expires, so that if any additional costs are incurred, the bill of costs will not have to be amended.

The bill of costs will then be forwarded to the deputy clerk responsible for taxation of costs. The section of Federal Rule of Civil Procedure 54(d)(1) requiring fourteen days' notice simply means that at least fourteen days must elapse between the filing

of the bill of costs and the taxing of costs; as a practical matter, it is usually necessary in the Eastern District of Pennsylvania for much more than fourteen days to process a taxation of costs request pursuant to § 1920 and these procedures. *Costs will not be taxed until the underlying litigation is completed, and until after any period in which an appeal may be raised has lapsed; this is based on the simple principle that until the underlying litigation is over, the issue of who is the ultimately "prevailing party" has not yet been determined. Once the issue of who is the ultimately prevailing party has been finally determined, the clerk shall send letters to both parties (or their counsel) asking for objections in writing from the non-prevailing party within fourteen (14) days, with the prevailing party then having fourteen (14) days to respond in writing.*

* * * * *

In order to avoid the possibility of this Clerk entering a taxation opinion which may possibly have to be vacated at a later point in time, *the Clerk will delay the taxing of costs until after all appeals have been exhausted* (or, until after the time period for filing an appeal has lapsed).

Clerk's Procedural Handbook, Taxation of Costs, August 7, 2012 at 25(footnotes omitted) (emphasis added).

Since both parties have filed appeals in this case and the prevailing party has not "ultimately" been determined and since consequently, the clerk's office has not sent letters asking for objections, Plaintiffs will defer their objections to the Bill of Costs until such time the Clerk issues notice seeking those objections.

Respectfully submitted,

October 14, 2013

/s/ J. Michael Murray
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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2013, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ J. Michael Murray

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